

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

TERRENCE ALLAN VANN, et al.,	)	Civil No.13-2221-BEN(WVG)
	)	
	)	THIRD AMENDED
Plaintiffs,	)	NOTICE AND ORDER
	)	FOR EARLY NEUTRAL
v.	)	EVALUATION CONFERENCE
	)	
MESSAGE ENVY FRANCHISING, LLC, et al.,	)	
	)	
Defendants.	)	
_____	)	

IT IS HEREBY ORDERED that an Early Neutral Evaluation ("ENE") of your case will be held on **April 17, 2014**, at **9:00 AM** before United States Magistrate Judge William V. Gallo, United States Courthouse, Courtroom 2A, Second Floor, 221 West Broadway, San Diego, California. The ENE set for May 12, 2014 at 9:00 AM is vacated.

**The following are mandatory guidelines for the parties preparing for the Early Neutral Evaluation Conference.**

1           **1. Purpose of the Conference**

2           The purpose of the ENE is to permit an informal  
3 discussion between the attorneys, parties and the settle-  
4 ment judge of every aspect of the lawsuit in an effort to  
5 achieve an early resolution of the case. All conference  
6 discussions will be informal, off the record, privileged  
7 and confidential. Counsel for non-English speaking  
8 parties is responsible for arranging for the appearance of  
9 an interpreter at the conference.

10           **2. Personal Appearance of Parties Is Required:**

11           All parties, adjusters for insured defendants, and  
12 other representatives of a party having full and complete  
13 authority<sup>1</sup> to enter into a binding settlement, and the  
14 principal attorneys responsible for the litigation, must  
15 be present **in person** and legally and factually prepared to  
16 discuss settlement of the case. See S.D. Cal. Civ. L. R.  
17 16.1(c).

18           **3. Full Settlement Authority Required**

19           In addition to counsel who will try the case, a  
20 party or party representative with full settlement author-  
21 ity must be present for the conference. In the case of a

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23           <sup>1</sup> "Full authority to settle" means that the individuals at the settlement  
24 conference must be authorized to fully explore settlement options and to  
25 agree at that time to any settlement terms acceptable to the parties.  
26 Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir.  
27 1989). The person needs to have "unfettered discretion and authority" to  
28 change the settlement position of a party. Pitman v. Brinker Intl., Inc.,  
216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person  
with unlimited settlement authority to attend the conference includes that  
the person's view of the case may be altered during the face to face  
conference. Id. at 486. A limited or a sum certain of authority is not  
adequate. The person with full settlement authority must be able to  
negotiate a settlement without being restricted by any predetermined level  
of authority. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir. 2001).

1 corporate entity, an authorized representative of the  
2 corporation who is not retained outside counsel must be  
3 present and must have discretionary authority to commit  
4 the company to pay an amount up to the amount of the  
5 plaintiff's prayer (excluding punitive damage prayers).  
6 The purpose of this requirement is to have representatives  
7 present who can settle the case during the course of the  
8 conference without consulting a superior.

9 Counsel for a government entity may be excused from  
10 this requirement so long as the government attorney who  
11 attends the ENE conference (1) has primary responsibility  
12 for handling the case; and (2) may negotiate settlement  
13 offers which the attorney is willing to recommend to the  
14 government official who has ultimate settlement authority.

15 Unless there are **extraordinary circumstances**,  
16 persons required to attend the conference pursuant to this  
17 Order shall not be excused from personal attendance.  
18 Requests for excuse from attendance for extraordinary  
19 circumstances shall be made in writing at least one week  
20 before the conference. Failure to appear at the ENE  
21 conference will be grounds for sanctions.

#### 22 **4. Settlement Proposal and Response Required**

23 No later than fifteen (15) days before the scheduled  
24 ENE Conference, Plaintiff(s) shall submit to Defendant(s)  
25 a written settlement proposal. No later than ten (10) days  
26 before the scheduled ENE Conference, Defendant(s) shall  
27 submit a response to Plaintiff(s)' settlement proposal.  
28 All parties shall be prepared to address in their ENE

1 Statements, and discuss at the ENE Conference, the settle-  
2 ment proposal and the response.

3 **5. ENE Statements Required**

4 **The Court requires that the parties file ENE State-**  
5 **ments, which may be confidentially submitted within the**  
6 **party's discretion. No later than five (5) court days**  
7 **prior to the ENE, the parties shall submit directly to the**  
8 **undersigned's chambers statements of five pages or less**  
9 **which outline the nature of the case, the claims, the**  
10 **defenses, and the parties' positions regarding settlement**  
11 **of, and attempts to settle the case. All briefs must**  
12 **comply with Judge Gallo's Chambers Rules.**

13 The parties shall meet and confer in good faith  
14 prior to the Early Neutral Evaluation Conference, and  
15 verify that they have done so in their respective Early  
16 Neutral Evaluation Conference statements, outlining the  
17 substance of their discussions and negotiations.

18 **6. Case Management Under The Federal Rules of Civil**  
19 **Procedure**

20 In the event the case does not settle at the ENE  
21 Conference, the parties shall also be prepared to discuss  
22 the following matters at the conclusion of the conference.

23 a. Any anticipated objections under Federal Rule of  
24 Civil Procedure 26(a)(1)(E) to the initial disclosure  
25 provisions of Federal Rule of Civil Procedure 26(a)(1)(A-  
26 D);

27 b. The scheduling of the Federal Rule of Civil  
28 Procedure 26(f) conference;

1 c. The date of initial disclosure and the date for  
2 lodging the discovery plan following the Rule 26(f)  
3 conference; and,

4 d. The scheduling of a Case Management Conference  
5 pursuant to Federal Rule of Civil Procedure 16(b).

6 The Court will issue an appropriate order addressing  
7 these issues and setting dates as appropriate.

8 **7. Time Allotted**

9 The Court generally allots two (2) hours for ENEs.  
10 Counsel should be prepared to be succinct and to the  
11 point. Requests for additional time must be made in  
12 writing in the party's ENE statement, accompanied by a  
13 short explanation.

14 **8. New Parties Must Be Notified by Plaintiff's**  
15 **Counsel**

16 Plaintiff's counsel shall give notice of the ENE  
17 Conference to all parties responding to the Complaint  
18 after the date of this Notice.

19 **9. Requests to Continue an ENE Conference**

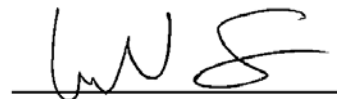
20 Civil Local Rule 16.1(c) requires that an ENE take  
21 place within 45 days of the filing of the first answer.  
22 Requests to continue ENE conferences are rarely granted.  
23 Counsel seeking to reschedule an ENE must first confer  
24 with opposing counsel. The Court will consider formal,  
25 written *ex parte* requests to continue an ENE conference  
26 when extraordinary circumstances exist that make a contin-  
27 uance appropriate. In and of itself, having to travel a  
28 long distance to appear at the ENE conference is not an

1 extraordinary circumstance. **Absent extraordinary circum-**  
2 **stances, requests for continuances of the ENE conference**  
3 **may not be considered unless submitted in writing no less**  
4 **than seven (7) calendar days prior to the scheduled**  
5 **conference.** Please refer to the undersigned's Chambers  
6 Rules for additional guidance regarding the areas which  
7 must be addressed in the request.

8 Questions regarding this case may be directed to the  
9 Magistrate Judge's Research Attorney at (619) 557-6384.  
10 Please consult the undersigned's Chambers Rules, available  
11 on the Court's website, before contacting chambers with  
12 any question(s).

13 IT IS SO ORDERED.

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15 DATED: March 19, 2014

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18 Hon. William V. Gallo  
19 U.S. Magistrate Judge  
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